

2019-72-S  
282136**Easterling, Deborah**

**From:** Doug Tompkins <doug.tompkins@berkeleycountysc.gov>  
**Sent:** Wednesday, February 20, 2019 12:28 PM  
**To:** Hipp, Dawn; PSC\_Contact; Boyd, Jocelyn  
**Cc:** Morgan, Willie; Nelson, Jeff; Majewski, Hannah  
**Subject:** RE: Guerin's Creek S/D  
**Attachments:** guerin purchase and sale agreement.docx

Forgot that one  
 Ready to be signed, just waiting on PSC to say to proceed

**From:** Hipp, Dawn <dhipp@ors.sc.gov>  
**Sent:** Wednesday, February 20, 2019 12:13 PM  
**To:** Doug Tompkins <doug.tompkins@berkeleycountysc.gov>  
**Cc:** Morgan, Willie <wmorgan@ors.sc.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Majewski, Hannah <hmajewski@ors.sc.gov>  
**Subject:** RE: Guerin's Creek S/D

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Good Morning, Doug!

I do not see where there is a signed agreement to transfer between BCWS and Charlie Northcutt. Did I overlook that document?

Thanks for your help!



**Dawn M. Hipp**  
**Chief Operating Officer**  
 Office of Regulatory Staff

 [DHIPP@ORS.SC.GOV](mailto:DHIPP@ORS.SC.GOV)  (803) 737-0814

 1401 Main Street, Suite 900  
 Columbia, SC 29201

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**NOTE THE CHANGE IN EMAIL ADDRESS. PLEASE UPDATE YOUR RECORDS.**

**From:** Doug Tompkins <[doug.tompkins@berkeleycountysc.gov](mailto:doug.tompkins@berkeleycountysc.gov)>  
**Sent:** Wednesday, February 20, 2019 9:03 AM  
**To:** [Jocelyn.boyd@psc.sc.gov](mailto:Jocelyn.boyd@psc.sc.gov); Hipp, Dawn <[dhipp@ors.sc.gov](mailto:dhipp@ors.sc.gov)>; Vaughan, David R. <[vaughadr@dhec.sc.gov](mailto:vaughadr@dhec.sc.gov)>;  
PSC\_Contact <[Contact@psc.sc.gov](mailto:Contact@psc.sc.gov)>  
**Cc:** Majewski, Hannah <[hmajewski@ors.sc.gov](mailto:hmajewski@ors.sc.gov)>; Tripp Gandy <[tripp.gandy3239@gmail.com](mailto:tripp.gandy3239@gmail.com)>; Tripp Gandy  
<[tripp.gandy3239@gmail.com](mailto:tripp.gandy3239@gmail.com)>  
**Subject:** FW: Guerin's Creek S/D

Ms. Boyd

Please be advised that Berkeley County Water and Sanitation (BCWS) is in the process of acquiring the Guerin's Creek sewer system. All of the necessary documents are attached and ready for execution.

Over 20 years ago, Berkeley County granted a franchise to the H.M. Northcutt Corp to provide sewer service to this area. The agreement has expired and the Northcutt Corp. no longer wants to continue with this operation. BCWS feels that it is in everyone's best interest and for the health and wellbeing of the residents of Guerin's Creek S/D to take over the operation and maintenance of this system. All parties have agreed to this transfer.

BCWS has been in the sewer business since 1976 and now has over 46,000 sewer accounts and over 28,000 water accounts, with a Moody's bond rating of Aa3 and Standard and Poor rating of AA-.

BCWS has been working on this along with the Office of Regulatory Staff and the South Carolina Department of Health and Environmental Control to make this a possibility.

Therefore, BCWS is requesting approval by the Public Service Commission of the transfer of the Guerin's Creek Sewer System to BCWS. BCWS would also request that any hearings, if applicable, be waived.

We are ready to proceed as soon as the PSC allows us to.

Although the notification letter stated we would start billing in September, this has not happened yet.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Douglas m Tompkins

Director

Berkeley County Water and Sanitation

843-719-2337

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STATE OF SOUTH CAROLINA )

PURCHASE AND SALE AGREEMENT

COUNTY OF BERKELEY )

This Purchase and Sale Agreement (hereinafter the "Agreement") is entered into this day of November, 2018 (the "effective date"), by and between **BERKELEY COUNTY, SOUTH CAROLINA** a body politic and organized under the laws of the State of South Carolina, (hereinafter the "Purchaser") and **H.M. NORTHCUTT** (the "Seller").

WITNESSETH

**WHEREAS**, Seller is the owner of real property with improvements and personal property include but not be limited to fixtures, equipment, tools, fences, , valves, pipes, customer information and easement access rights in Berkeley County, South Carolina located more particularly in the southern portions of Berkeley County, (hereinafter the "Property"); and

**WHEREAS**, the Seller desires to sell the Property and the Purchaser is desirous of buying the Property subject to the contingencies, terms, and conditions set forth in this Agreement; and

**WHEREAS**, the Seller expressly recognizes that the Purchaser is bound to purchase property upon reasonable and acceptable terms within the available budget imposed upon the Purchaser by the Berkeley County Council; and

**WHEREAS**, the Seller has agreed to sell the Property to the Purchaser for the sum of **Ten dollars and No/100 (US) (\$10.00)**; and

**NOW, THEREFORE**, for and in consideration of the recitals, the promises, covenants, agreements and obligations of Purchaser and Seller as herein contained, and other valuable consideration in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

1. **Sale and Property.** Seller agrees to sell and Purchaser agrees to buy the Property based on the terms set forth above and herein.
  - (a) **Description.** The Property contemplated for sale and purchase pursuant to this agreement is more fully shown on **Exhibit A**, consisting of 2.39 acres of land and sewer tile field located particularly in the southern portion of Berkeley County, (hereinafter the "Property").



2. **Purchase Price.** The Purchase Price for the Property shall be **Ten dollars and No/100 (US) (\$10.00)** (the "Purchase Price"). Such purchase price shall be payable to Seller at the Closing (hereinafter defined). At the Closing the Purchase Price shall be paid by Purchaser to Seller in United States currency by way of cash, certified funds, or other immediately available funds, and adjusted to reflect the proration, if any, provided for in this Agreement.
3. **Conveyance of Property.** At Closing, the Seller shall convey marketable title to the Property to Purchaser in fee simple by general warranty deed and bill of sale, subject to taxes for the year of closing, all restrictions, easements and covenants of record (provided they do not make title unmarketable) and to all governmental statutes, ordinances, rules and regulations.
4. **Inspections Prior to Closing.** Purchaser, its agents and representatives, shall at all times prior to Closing have the privilege, opportunity, and right of entering topographical surveys, soil test borings, percolation tests, drainage, utility and traffic determinations, environmental audits, tests and studies, and other tests needed to determine surface, sub-surface, and topographic conditions, and any other tests deemed necessary by Purchaser. Purchaser shall repair all damage to the Property if requested by the Seller as a result of any studies prior to purchase.
5. **Closing.** The purchase and sale contemplated herein shall take place on or before **November 10, 2018** (the "Closing") at a convenient location as the parties may mutually agree upon. Seller shall deliver possession of the Property to Purchaser at Closing.
6. **Seller's Representation, Warranties and Covenants.** In order to induce Purchaser to enter into this Agreement and to purchase the Property, in addition to the warranties, representations, covenants and undertakings contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and covenants, each of which is material and is relied upon by Purchaser:
  - (a) **Title.** Seller is the sole owner of good and marketable fee simple title to the Property.
  - (b) **Authority of Seller.** Seller, and its agent signing and executing the Agreement, has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by Seller, will be a valid and binding obligation of the Seller in accordance with its terms and will not violate any agreement, Order, decree or judgement to which Seller is bound or subject.
  - (c) **No Violations.** To the best of its knowledge, Seller is not in violation and has not received notice of the violation of zoning or other ordinances, resolutions, statutes or regulations of any government, or governmental agency in respect to the operation, use, maintenance or condition of the Property or any part thereof.
  - (d) **No Other Agreements.** No options or other contracts have been granted or entered into which are still outstanding and which give any party a right to purchase any interest in the property or part thereof.

(e) **No Other Condemnation.** To the best of the Seller's knowledge, there is no other condemnation or eminent domain proceedings pending or contemplated, against the Property or any part thereof and the Seller has received no notice, oral or written, from any other public authority to take or use the Property or any part thereof.

(f) **Environmental Matters.** To the best of Seller's knowledge, the Property has not been previously used as a landfill or dump for garbage refuse and no Hazardous Materials are or have been located, used, stored or disposed of on the Property.

(i) "Hazardous Materials" shall include, without limitation, any substance, the presence of which on the Property, (A) require reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Property, or (C) which, of it emanated or migrated from the Property, could constitute a trespass.

(ii) "Environmental Requirements" shall mean all fines, fees, laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders and decrees, now or hereafter assessed, enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to holding and treatment of wastewater, water, pollution, the protection or regulation of human health, natural resources, to the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or water or Hazardous Materials into the environment (including without limitation, ambient air, surface water, groundwater, land, or soil).

(g) **No Archaeologically Significant Matters.** To the best of the Seller's knowledge, no archaeologically significant ruins or artifacts are located on the Property that would prohibit the intended use of the Property by the Purchaser.

(h) **FIRPTA Withholding.** Seller, collectively and individually, are not a "foreign person" as that term is defined in the Internal Revenue Code, Section 1445(F) (3), nor is the sale of the Property subject to any withholding requirements imposed by the Internal Revenue Code (including but not limited to Section 1445 thereof, or any withholding requirements imposed by the tax laws of the State of South Carolina.)

(i) **No Bankruptcy/Dissolution Event.** No "Bankruptcy/Dissolution Event" (as hereinafter defined) has occurred with respect to Seller and this Property. "Bankruptcy/Dissolution Event" means the occurrence of any of the following: (a) the commencement of a case under Title 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy laws or other similar law; (b) the appointment of a trustee or receiver of any property interest; (c) an assignment for the benefit of creditor; (d) an attachment, execution or other judicial seizure of a substantial property interest; (e) the taking of, or failure to take, or submission to any action indicating an inability to meet its financial obligation as they accrue; or (f) a dissolution or liquidation.

7. **Survey.** Purchaser, if it deems necessary, shall request and cause to be made, at the cost of the Seller, a Survey ("Survey") of the Property indicating the true and correct legal description thereof and delineating the boundary lines of said Property. Said

Survey shall be prepared by a surveyor registered and licensed in the State of South Carolina and shall set for the acreage contained thereon. However, if a current or recent survey (less than 20 years old from the date of this agreement) exists of the Property, the Seller agrees to deliver a copy of said survey (to include any wetlands delineation surveys) to the Purchaser within 30 days of the signing of this agreement and Purchaser will accept said survey in lieu of the requirements of this Section.

8. **Risk of Loss.** Loss or damages to the Property by fire or storm or other casualties between the date hereof and Closing Date, shall not void or impair this Agreement.
9. **Proration.** All property taxes, assessments, water charges, sewer fees and other applicable charges shall be prorated as of the Closing based on a 365-day year. Tax proration shall be based on the tax information available on the date of closing.
10. **Closing Costs.** Closing costs, including the costs of obtaining any financing, shall be paid as follows:
  - (a) Purchaser shall pay for all closing costs associated with this transaction except costs associated with section 11(c).
  - (b) Purchaser shall pay the fees for the costs of any appraisal, the preparation of other closing documents procured on Purchaser's behalf, including Purchaser's attorney's fees, and the costs of a title insurance policy. This property will be exempt from recording fees and documentary stamp fees since it is a transfer into Berkeley County.
  - (c) To the extent the Property is or may hereafter be subject to roll-back taxes pursuant to sections 12-43-220, et seq. of the S.C. Code of Laws, the Seller shall be solely responsible for and shall pay any such roll-back taxes levied or to be levied against the Property or any portion thereof. The provisions of this Section shall survive closing.
11. **Deliveries at Closing.** In addition to other conditions precedent set forth elsewhere in this Agreement, Seller and Purchaser shall deliver to the other the documents and items set forth hereunder, the delivery and accuracy of which shall further condition the obligations of the party to whom such are delivered to consummate the purchase and sale hereunder contemplated.
  - (a) **Seller's Deliveries at Closing.** At Closing, Seller shall deliver the following to the Purchaser:
    - (i) **Deed and Bill of Sale.** General warranty deed and bill of sale in recordable form, duly executed by the Seller conveying to Purchaser good, marketable and insurable fee simple title to the Property except as set forth hereinabove.
    - (ii) **Lien Waiver.** An owner's affidavit or lien waiver satisfactory of the purpose of removing the mechanic's lien exception from the Purchaser's title insurance policy for the Property.
    - (iii) **Residency Affidavit.** An Affidavit of Seller providing the Seller's federal identification numbers and certifying that this transaction is not subject to withholding taxes in accordance with South Carolina Revenue Ruling 90-3.
    - (iv) **Settlement Statement.** A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Sellers pursuant to the Agreement.

- (v) **Other Documentation.** Such other documents as may be reasonable in the opinion of Purchaser or their counsel to consummate and close the transaction contemplated herein pursuant to the terms and conditions of this Agreement. This shall include, but not be limited to, all documentation regarding inspections and filings with regulatory agencies, billing information and accounts receivable information.

(b) **Purchasers Deliveries at Closing.** At the Closing, Purchaser shall deliver the following to Sellers:

- (i) **Purchase Price and Other Costs.** The Purchase Price as set forth in Section 2.
- (ii) **Settlement Statement.** A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Purchaser and Sellers pursuant to the Agreement.
- (iii) **Other Documentation.** Such other documents as may be reasonable in the opinion of Purchaser or their counsel to consummate and close the transaction contemplated herein pursuant to the terms and conditions of this Agreement.

**12. Default.** Excepting default by non-fulfillment of the contingency clause contained in Section 2(a) of this Agreement, upon the failure of the Purchaser to comply with the terms of this Agreement within the stipulated time and after receipt of notice of said default, with a five (5) day right to cure, it is understood and agreed by and between the parties hereto that the Seller, may at its option and in its sole discretion and its sole remedy, receive the Earnest Money deposit paid by or on behalf of Purchaser as liquidated damages, in which event Seller shall have no other remedy and no further obligation to Purchaser under this Agreement. In the event of a default of the performance of the obligations of Seller pursuant to Agreement, Purchaser, as its sole remedies, shall be entitled to either: (i) terminate the Agreement and receive a full refund of the Earnest Money or (ii) seek specific performance of this Agreement. Either Seller or Purchaser is hereby allowed a five (5) day right to cure any default prior to termination hereof. To effect termination after the right to cure, the terminating party shall send a letter to the addresses listed in this agreement in Section 14 stating its intention to terminate and date of termination and also setting forth within the letter the particular reasons for termination. This section does not apply to Section 2(a) "Contingency" as that particular section outlines the remedies for failure to meet the contingency requirements.

**13. Notices.** Any notice to Sellers or Purchaser shall be in writing and shall be delivered to the address of the appropriate party stated below, or such other address as shall subsequently be provided by appropriate notice. Any written notice shall be deemed received on the second calendar day following the day of mailing if addressed and mailed by certified or registered mail, postage paid to the address set forth below:

**Purchaser:** Berkeley County

**Seller:** H.M. Northcutt

**14. Real Estate Commission.** Any commission due a real estate agent will be received from the Purchase Price and distributed to the Agent after Closing by the Seller or Seller's attorney. The Purchaser is not responsible for any real estate commissions in this particular transaction. These representations and warranties shall survive Closing.

**15. Miscellaneous.**

- (a) **Entire Agreement.** This Agreement and the exhibits attached hereto contain the entire agreement between the parties. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by both the Purchaser and Seller.
- (b) **Counterparts.** This Agreement may be executed in any number of counterparts which together shall constitute the agreement of the parties. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine or electronic mail shall be treated as an original document unless there is a question of the validity of the document itself and in that event an original copy with original signature will be requested by either party. The signature of any party thereon shall be considered an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile and electronic mail document shall be re-executed by the parties in original form. No party hereto may raise the use of a facsimile machine or electronic mail as a defense to the enforcement of this Agreement or any amendment executed in compliance with this subparagraph unless a question of validity of the document is raised and an original is requested as described above in this subparagraph.
- (c) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (d) **Survival of Warranties.** It is the express intention and agreement of the parties to this Agreement that all covenants, agreements, statements, representations and warranties made by Seller and Purchaser in this Agreement shall merge into the deed and other instruments executed at the Closing.
- (e) **Waiver.** Failure by Purchaser or Seller to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.
- (f) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of South Carolina.



- (g) **Time of Essence.** Time is of the essence in this agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the State of South Carolina, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday, or legal holiday.
- (h) **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be effected by such illegal, invalid, or enforceable provision or by its severance from this Agreement.
- (i) **Paragraph Headings.** The paragraph headings as herein used are for convenience of reference only, and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations or warranties herein set forth or limit the provisions or scope of any paragraph.
- (j) **Pronouns.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.
- (k) **Records.** Purchaser shall not file this Agreement or any memorandum hereof in any public records however once this agreement is finalized, under the South Carolina Freedom of Information Act, this contract will become public information if so requested pursuant to the letter of said Act.
- (l) **Attorney Fees.** Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall NOT be entitled to receive from the losing party its attorney's fees and other court costs in connection with said proceeding at trial and through all appeals.
- (m) **Termination of Agreement.** This Agreement may be terminated by either party after adequate notice and the right to cure expires, as described herein. In the event this Agreement is terminated for any reason under the terms of this Agreement, hereunder, except for any obligations that expressly state that they will survive any termination hereof all of which shall survive any such termination. If Purchaser terminates this Agreement or fails to purchase the Property for any reason, Purchaser shall return to Seller those items which Seller submitted to Purchaser for Purchaser's review. Nothing in this contract shall preclude each party from mutually agreeing in writing with the other to terminate this agreement for any reason.
- (n) **Construction.** As used in this Agreement, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, sections, paragraph or other subdivision.
- (o) **Exhibits, etc.** All exhibits and schedules annexed hereto are expressly made a part of this Agreement as though fully set forth herein and all references to this Agreement or in any such exhibits or schedules shall refer to and include all such exhibits and schedules.

- (p) **Due Execution.** Seller and Purchaser each represents and warrants to the other that the execution and delivery of this Agreement; the sale of the Property by Seller; and the purchase of the Property by Purchaser have been duly authorized by all required actions and that the party signing this Agreement on behalf of Seller and Purchaser is duly authorized to do so.
- (q) **No Agency or Joint Venture.** This Agreement shall not be construed as in any way establishing a partnership, joint venture, express or implied agency, special confidential relationship or employer-employee relationship or as establishing any fiduciary obligations between Seller and Purchaser.
- (r) **Amendments.** This Agreement can only be amended by written authorization acknowledged and executed by each party hereto. Unless the amendment specifically alters a provision of this agreement, the amendment shall not serve to alter or amend any other provision of this agreement unless expressly stated within the body of the amendment.
- (s) **Extension.** The date of closing may be extended upon written consent of both parties for a maximum periods of time agreed upon by both parties.

**16. Withholding at Closing.** All fines, fees, dues or amounts owed to the SC Department of Health and Environmental Control or any other local, state or federal agency that relate to or are a lien upon the real and personal property outlined in this Agreement and being offered for sale by the Seller, shall be withheld at closing and distributed to the appropriate agency by the closing attorney.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the year and day first written above.

**PURCHASER**

**BERKELEY COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Witness 1

By: \_\_\_\_\_

\_\_\_\_\_  
Witness 2

County Supervisor

**SELLER**

\_\_\_\_\_  
Witness 1

\_\_\_\_\_

\_\_\_\_\_  
Witness 2

H. M. Northcutt

**SELLER**

\_\_\_\_\_  
Witness 1

By: \_\_\_\_\_

\_\_\_\_\_  
Witness 2

Its: \_\_\_\_\_